UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,029	09/18/2003	Merwin H. Alferness	ROC920030085US1	9131

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IBM CORPORATION
ROCHESTER IP LAW DEPT. 917
3605 HIGHWAY 52 NORTH
ROCHESTER, MN 55901-7829

EXAMINER

ART UNIT	PAPER NUMBER

DATE MAILED: 12/31/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

<table>
<tr><td rowspan="2">Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)</td><td>Application No.
10/667,029</td><td>Applicant(s)
ALFERNESS ET AL.</td></tr>
<tr><td>Examiner
TANH Q. NGUYEN</td><td>Art Unit
2182</td></tr>
</table>

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on <u>08 October 2009</u> is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file anamended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☒ Other (including any explanation in support of the above items):

   <u>*See Continuation Sheet.*</u>

/TANH Q. NGUYEN/
Primary Examiner, Art Unit 2182

Continuation of 10. Other (including any explanation in support of the above items):

The explanation of the subject matter claimed in each of the independent claims is not concise.

Appellant cites page 10, lines 26-31 of the specification to support "determining an amount of memory bandwidth of a network processor used by a plurality of port types to transmit data through a plurality of active ports". It appears that appellant relies of "the total amount of memory bandwidth currently used by the plurality of data types" of the citation to support the limitation.

Appellant cites page 10, lines 3-6 of the specification to support "determining an amount of memory bandwidth of the network processor used by each of the plurality of data types".

Applicant cites page 8, lines 10-14 and page 11, line 28-page 12, line 8 to support "dynamically adjusting an amount of memory bandwidth allocated to at least one of the plurality of data types based on the determinations". It appears that appellant associates "dynamically adjusting an amount of memory bandwidth allocated to at least one of the plurality of data types based on the determinations" with "activating a port" based on "C-limit - A-rate - E-rate".

The explanation of the subject matter claimed is not concise because there is nothing in the claims that suggests "activating a port" based on "C-limit - A-rate - E-rate". Furthermore, the claims do not preclude dynamically adjusting an amount of memory bandwidth allocated to an ATM data type (i.e. at least one of the plurality of data types). It appears that the specification suggests not - dynamically adjusting an amount of memory bandwidth allocated to an ATM data type. In addition, it appears that applicant considers E-rate as being associated with Ethernet data type. Note that page 10, lines 20-22 suggests Fast Ethernet and Gigabit Ethernet being types of Ethernet data - hence suggesting Ethernet data at one rate and/or speed (e.g. Fast Ethernet) being a different data type than Ethernet data at another rate and/or speed (e.g. Gigabit Ethernet).

Essentially, appellant provides citations that support claims with a different scope than the pending claims, which only suggest

determiningt (A-rate + E-rate) through a plurality of active ports

determining A-rate and E-rate

dynamically adjusting memory bandwidth allocated to data type A based on A-rate, E-rate, and (A-rate + E-rate);
dynamically adjusting memory bandwidth allocated to data type E based on A-rate, E-rate, and (A-rate + E-rate); or
dynamically adjusting memory bandwidth allocated to data type A and memory bandwidth allocated to data type E based on A-rate, E-rate, and (A-rate + E-rate).

TQN: December 24, 2009